

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:97CR049
)	
Plaintiff,)	
)	
vs.)	Judge Peter C. Economus
)	
JERRY SIMS,)	
)	
Defendant.)	<u>ORDER</u>

On November 3, 1997, the Defendant, Jerry Sims, was sentenced to 97 months imprisonment, followed by ten (10) years of supervised release, for conspiracy to possess with intent to distribute a controlled substance, a Class A felony. His supervised release commenced on March 8, 2004.

On or about March 12, 2009, the Defendant's probation officer submitted a violation report alleging the following violations of the terms of supervised release:

1. **NEW LAW VIOLATION** - On September 26, 2008, the offender and a co-defendant were arrested by the Cleveland Police Department and charged with Drug Trafficking, Possession of Drugs and Possession of Criminal Tools. The offender was in possession of 7 blue paper packets containing .280 grams of heroin and \$1,110 in cash. On October 21, 2008, the offender was indicted in Cuyahoga County Common Pleas Court on case CR-08-516866-B. On February 3, 2009, the offender pled guilty to Drug Possession, a felony of the 5th degree. The remaining charges were dismissed. On March 9, 2009, the offender was sentenced to one year community control with conditions.

2. **FAILURE TO NOTIFY PROBATION OFFICER WITHIN 72 HOURS OF POLICE CONTACT.** On September 29, 2008, the offender was released from custody on the above arrest and he failed to report the new law violation until October 14, 2008, when he submitted his monthly report form to the duty officer.

The matter was referred to Magistrate Judge James S. Gallas to conduct the appropriate proceedings, except for sentencing, and to prepare a report and recommendation. The Defendant appeared before the Magistrate for a violation hearing on March 31, 2009, and was represented by counsel Carolyn Kucharski. At the hearing, the Defendant admitted to violations one and two. The Magistrate has issued a report and recommendation, recommending that the Court find that the Defendant has violated the terms of his supervised release.

The Court has reviewed the Magistrate's report and recommendation and finds that it is well-supported. The Defendant has admitted violations one and two. As a result, the Court finds that the Defendant has violated the terms of his supervised release.

The Court has considered the statutory maximum sentence of five years pursuant to 18 U.S.C. § 3583(e)(3). The Court has also considered the advisory policy statements set forth in Chapter Seven of the United States Sentencing Guidelines prior to imposing sentence. The guideline range is 4-10 months pursuant to U.S.S.G. § 7B1.4(a). Furthermore, the Court has considered the factors for sentencing listed in 18 U.S.C. § 3553(a) and 3583(d).

The Court hereby **ADOPTS** the Magistrate's Report and Recommendation. (Dkt. #

520). Based on this Court's review of all relevant factors, the Court hereby orders that the Defendant's supervised release is **REVOKED**, and the Defendant is sentenced to ten (10) months imprisonment. The sentence shall be held in abeyance until October 13, 2009, at 10:30a.m., when the Court will determine whether or not to implement the sentence imposed.

IT IS SO ORDERED.

Issued: April 9, 2009

s/ Peter C. Economus
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE